

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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JUSTIN BUERMANN,

Case No. 15-CV-3964 (JRT/FLN)

Petitioner,

v.

REPORT AND RECOMMENDATION

TOM ROY, Minnesota Commissioner of  
Corrections,

Respondent.

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This matter is before the Court on limited remand from the Eighth Circuit Court of Appeals to determine whether petitioner Justin Buermann should be granted a certificate of appealability (“COA”). A § 2254 habeas corpus petitioner cannot appeal an adverse ruling on his petition unless he is granted a COA. *See* 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22(b)(1). A COA cannot be granted unless the petitioner “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make such a showing, “[t]he petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

In this case, it is highly unlikely that any other court, including the Eighth Circuit, would treat Buermann’s current habeas corpus petition differently than it was treated before this Court. The habeas petition submitted by Buermann is squarely foreclosed by the relevant statute of limitations. *See* 28 U.S.C. § 2244(d). Buermann failed to identify, and this Court cannot discern, anything novel, noteworthy or worrisome about this case that warrants appellate review. It is therefore recommended that Buermann should not be granted a COA in this matter.

RECOMMENDATION

Based on the foregoing, and on all of the files, records, and proceedings herein, IT IS  
HEREBY RECOMMENDED that petitioner Justin Buermann NOT be issued a certificate of  
appealability.

Dated: September 14, 2016

s/Franklin L. Noel

Franklin L. Noel

United States Magistrate Judge

### **NOTICE**

**Filing Objections:** This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in LR 72.2(c).

**Under Advisement Date:** This Report and Recommendation will be considered under advisement 14 days from the date of its filing. If timely objections are filed, this Report and Recommendation will be considered under advisement from the earlier of: (1) 14 days after the objections are filed; or (2) from the date a timely response is filed.